

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)

Reexamination of the Comparative)
 Standards for Noncommercial)
 Educational Applicants)

MM Docket No. 95-31

To: The Commission

RECEIVED
 MAR 15 1999
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

REPLY COMMENTS

WAY-FM, INC.
 EAGLE'S NEST FELLOWSHIP CHURCH
 BY THE CAPE BROADCASTING
 CHRISTIAN BROADCASTING ACADEMY
 SIDE BY SIDE, INC.
 ILLINOIS BIBLE INSTITUTE, INC.
 FRIENDSHIP COMMUNICATIONS, INC.
 TRINITY CHURCH OF THE NAZARENE
 KSBJ EDUCATIONAL FOUNDATION
 RADIO TRAINING NETWORK, INC.

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March 15, 1999

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Petitioners, WAY-FM, Inc.¹; Eagle's Nest Fellowship Church²; By the Cape Broadcasting³;
Christian Broadcasting Academy⁴; Side By Side, Inc.⁵; Illinois Bible Institute⁶; Friendship

¹ WAY-FM, Inc. is the licensee of NCE stations: WAYJ-FM, Fort Myers, Florida; WAYF-FM, West Palm Beach, Florida; WAYM-FM, Columbia, Tennessee. WAY-FM, Inc. or its predecessor Southwest Florida Community Radio, have pending applications for new FM noncommercial stations on Channel 201C3, Harvest, Alabama (BPED-950413ME); on Channel 206, Westpoint, California; on Channel 205, Fort Collins, Colorado; and Channel 201, Westminster, Colorado (BPED-960521MA).

² Eagle's Nest Fellowship Church has a pending application for a new FM noncommercial station on Channel 204B1, Harrington, Delaware (BPED-980320MD).

³ By the Cape Broadcasting has a pending application for a new FM noncommercial station on Channel 206B1, Cape Charles, Virginia (BPED-980320MN).

⁴ Christian Broadcasting Academy is the licensee of noncommercial station KLYT-FM, Albuquerque, New Mexico.

⁵ Side By Side, Inc. is the licensee of noncommercial stations WYSZ(FM), Maumee, Ohio and WYSA-FM, Wauseon, Ohio; and has a pending application for a new FM noncommercial station on Channel 207A, Lima, Ohio (BPED-960528MA).

⁶ Illinois Bible Institute, Inc. is the licensee of noncommercial stations WIBI(FM), Carlinville, Illinois; WTSG(FM), Carlinville, Illinois; WBGL(FM), Champaign, Illinois; WNLD(FM), Decatur, Illinois; WBMV(FM), Mount Vernon, Illinois; WCIC(FM), Pekin, Illinois; WSCT(FM), Springfield, Illinois; and WCRT(FM), Terre Haute, Indiana; and has pending applications for new FM noncommercial stations in Elgin, Illinois (BPED-980827ME) and Princeton, Illinois (BPED-980420MH).

Communications, Inc.⁷; Trinity Church of the Nazarene⁸; and Radio Training Network, Inc.⁹; KSBJ Educational Foundation¹⁰ (hereinafter "Petitioners") file these Reply Comments. Over 40 separate Comments have been filed in this Rulemaking Proceeding. Petitioners address several of the significant proposals raised.

1. Point System/Lotteries/Comparative Hearings.

The overwhelming majority of the Comments filed, including the Comments filed by Petitioners, support adoption of a point system. Over 30 of the parties filing Comments support a point system, whereas only 2 support comparative hearings, and only 4 support a lottery. The most extensive Comments filed in support of a lottery were filed by Pensacola Christian College ("Pensacola"). Pensacola, in essence, urges adoption of the same procedures used for allocation of low power television stations with the caveat that no preferences be awarded. Pensacola emphasizes that the advantage of its proposal is quick resolution of the backlog of pending applications, as well

⁷ Friendship Communications, Inc. is the licensee of KWOF(AM), Waterloo, Iowa; and has a pending application for a new FM noncommercial station on Channel 89.1, Hiawatha, Iowa (BPED-970123MA).

⁸ Trinity Church of the Nazarene has pending applications for new FM noncommercial stations on Channel 213A, Lompoc, California (BPED-950324MB) and Channel 218A, Lompoc, California (BPED-960111MF).

⁹ Radio Training Network, Inc. is the licensee of noncommercial stations WJIS(FM), Bradenton, Florida; WLPJ(FM), New Port Richey, Florida; WLFJ(FM), Greenville, South Carolina; WAFJ(FM), Belvedere, South Carolina; KWND(FM), Springfield, Missouri; and has pending applications for new FM noncommercial stations for Sebring, Florida (BPED-960307ME); Port Wentworth, Georgia (BPED-961213MD); and Hickory, North Carolina.

¹⁰ KSBJ Educational Foundation, Inc. is the licensee of noncommercial station KSBJ(FM), Humble, Texas. Three of its Board members are on the Board of Mammoth Educational Foundation, Inc., an applicant for a new noncommercial FM station in Mammoth, Arizona; Morton Cochran County Educational Foundational, Inc. an applicant for a new noncommercial FM station in Morton, Texas; and Appomattox Educational Foundation, Inc. an applicant for a new noncommercial FM station in Ashland, Virginia.

as ease of implementation. Although these are both positive considerations, they do not outweigh the detrimental impact of implementing a completely random selection process. Under Pensacola's proposal, the public interest in advancing diversity of media, optimal service under Section 307(b), or any of the other public interest considerations raised in the Commissions *Further Notice* would be jettisoned in favor of expediency. Pensacola's proposal would primarily benefit applicants like itself with many applications pending throughout the country, as well as applicants with many existing construction permits and licenses.

2. Point System Preferences.

2.1 Diversity.

Most of the comments support allocation of points to promote diversity of ownership. The suggested points range from a high of 4 points to an applicant that does not control any other station¹¹ to no points. Many comments support varying points dependent on the number of other media interests. For example, National Public Radio proposes 2 points for five or fewer stations and 1 point for applicants which own ten or fewer stations. Petitioners have proposed 2 points for applicants which own no other stations within the same service area, and an additional point for any applicant that owns less than fifteen media interests.

Clearly there is no scientific or precise manner in which to determine the optimal points to credit an applicant based on media ownership. However, it appears there should be recognition of a point system to advance the important policy of diversification without unduly penalizing a broadcaster which has only a few stations. Mass filers and those with already a large number of

¹¹ Media Access Project for the National Federation of Community Broadcasters.

construction permits and licenses should be discouraged. In that regard, Petitioners support the Joint Comments of Noncommercial Educational Broadcasts and Licensees which suggest that 2 points be subtracted for applicants which own more than 25 stations, and 3 points should be subtracted from applicants which own more than 50 stations.

2.2 Local Programming.

Petitioners oppose award of points or preferences based on programming. A number of comments suggest that points be awarded for local programming.¹² Program content should be off limits to the Commission. Awarding preferences based on programming, even on the issue of the origination of the programming, involves governmental intrusion in program content issues, implicitly supporting certain types of programming over other programming. Furthermore, there is no evidence that locally originated programming is any more desirable to the public than programming that is not locally originated. In addition, it would be difficult to define local programming, and even more difficult to ensure that a broadcaster that had committed to a certain number of hours of local broadcasting had fulfilled its commitment.

2.3 Source of Funding.

Petitioners oppose award of any points for proposals to fund the station locally or from state or governmental funding. There is simply no way to accurately assess the amount of local support

¹² See, Regents of the University of California/Oakland (1 point for 40% locally produced community programming); Media Access Project for the National Federation of Community Broadcasters (5 points for 75% locally originated programming, 4 points for 50% locally originated programming, 3 points for 30% and 2 points for 10%); Student Educational Broadcasting proposes a preference for locally originated programming.

to be generated by a station, or to reasonably ensure that an applicant making a commitment to a certain percentage of local funding fulfills its commitment.

2.4 New Service vs. Improved Coverage.

Several commentors suggest that applications to improve existing service should be preferred over applications for new facilities. The Commission has always favored new service over improved service. *See Douglas, Georgia*, 10 FCC Rcd 2870 at ¶4 (1995) ("A first local aural FM transmission service is generally preferred over a proposal to upgrade an existing service"), *see also, Benton, Arkansas*, 3 FCC Rcd. 4840 (1988). If any preference is to be awarded, it should be awarded to the applicant providing a new service.

2.5 307(b) Issues.

Most all of the comments filed support award of points for providing a first or second NCE reception service, or for providing a first NCE transmission service. Petitioners also support award of points under these criteria, but the analysis should involve providing a first or second broadcast service, not first or second NCE service. This is especially true in light of past Commission precedent cited by Petitioners. *See Valley Broadcasters, Inc.*, 5 FCC Rcd. 2785, 2788 (1990), (requiring commercial and noncommercial stations to be considered when determining available transmission services, "The regulations governing noncommercial radio have changed markedly" since the early 1970s and "now all noncommercial educational stations have an obligation to serve the significant programming needs of their communities."); *See also, Channel 32 Broadcasting Company*, 6 FCC Rcd. 5188 (1991). In the event points are awarded for first or second NCE service, additional points should also be awarded for first or second broadcast service, whether that service is a first transmission service or reception service.

In determining whether there are existing NCE stations in a community, the Commission should take cognizance of the pendency of NCE applications. In the Lompoc, California proceeding, there are currently three separate proceedings for three different channels in Lompoc.¹³ No preference for a first NCE station should be awarded where an application for another NCE channel in the same community will be granted. For example, there are currently 2 applications pending for Channel 201, 88.1 in Lompoc, California. No other community of license is proposed. The Channel, therefore, will be licensed to Lompoc. Therefore, applicants for Channel 218 and Channel 213, also proposing Lompoc as the city of license, should not be given credit for providing a first NCE transmission service.

2.6 State-wide Plans.

Petitioners oppose the award of any points or credit for applications which are part of a state-wide network. This type of preference would, in essence, be governmental approval of programming sponsored and supported by states over private broadcasters. As noted above, the government should not involve itself in awarding preferences based on the content of programming. Aside from this, why should a station affiliated with a state network be preferred to a station locally owned and airing locally produced programming?

3. Limit on Filings Per Window.

Many comments support limiting the number of applications any one applicant can file during any one window. Many propose that the limit be no more than five per window. Petitioners support a limit on the number of applications to deter mass filers. However, an absolute numerical

¹³ (1) Channel 218A, 91.5, Lompoc, California; (2) Channel 213A, 90.5, Lompoc, California (and Channel 214A, Santa Maria, California); and (3) Channel 201, 88.1, Lompoc, California.

limit may be too strict or too lenient depending on the number of Channels available on any one window. If, for example, a window is published with only eight channels, allowing an applicant to file five applications is too high. Conversely, if a window opens with 100 or more channels, five is too low. Petitioners support limits of two applications or a number equal to 10% of the total number of frequencies listed in a cut off - whichever is higher.

4. Annual Certifications.

A number of commentators suggest annual certifications to ensure that a licensee granted a construction permit due to a point preference has fulfilled its commitments. The National Federation of Community Broadcasters proposes an annual certification with no more than a two point deviation. Where the points fall below this number, absent a waiver, the license would be turned in or sold to another entity committed to maintain the same number of points. Petitioners believe annual certifications have merit. Where a station fails to fulfill its obligations, it should be required to either turn in its license or sell to another entity for no more than expenses. It should also result in subtracting 5 points in any future proceeding for the next three years.

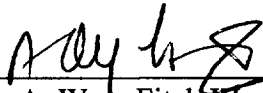
Petitioners note, however, that annual certifications are only necessary if the Commission is to award points for factors such as local residence, local funding, local programming, etc. - factors that can change. The point factors based on engineering coverage and diversification would not require annual certifications. Any grant based on engineering preferences would require that the station be built as specified. Any points awarded for diversification should be limited as of the time assessed.

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Respectfully submitted,

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March 15, 1999

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